

Virginia Hazardous Waste Facility Siting

Introduction

This document outlines the requirements and procedures under the Virginia Waste Management Act ([Article 6](#), (§10.1-1433 et seq.) of Chapter 14 of Title 10.1) and [9 VAC 20-20](#), [9 VAC 20-30](#), [9 VAC 20-40](#) and [9 VAC 20-50](#), respectively, addressing the Siting of Hazardous Waste Facilities and the associated Certification of Hazardous Waste Facility Sites. For specific requirements, definitions, procedures, etc., refer directly to the above referenced statute and regulations. For questions, contact the DEQ Central Office Hazardous Waste Program.

These provisions stipulate that “No person shall construct or commence construction of a hazardous waste facility without first obtaining a certification of site approval by the [Virginia Waste Management] board....”

Applicability

The siting requirements and associated certification apply to a “Hazardous Waste Facility” which is defined as “any facility, including land and structures, appurtenances, improvements and equipment for treatment, storage, or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal.”

The definition does not include facilities which are owned and operated by and exclusively for the on-site treatment, storage or disposal of wastes generated by the owner or operator; facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; and facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works.

On-site is defined as “facilities that are located on the same or geographically contiguous properties which may be divided by public or private right-of-way, and the entrance and exit between the contiguous properties are at a crossroads intersection so that the access is by crossing, as opposed to going along, the right-of-way. On-site also means noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.”

For new facilities, construction is defined as “the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment and structures.

For existing facilities, construction is defined as “the alteration or expansion of existing structures or facilities to initially accommodate hazardous waste, any expansion of more than 50% of the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will, in the opinion of the board, result in a substantially different type of facility.”

Preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident hereto are not included in the definition of “construction”.

Waiver from Procedures for Certain Existing Facilities

Limited waiver provisions apply to existing facilities that meet the definition of “construction”. Two types of waivers are available: 1) waivers to address an emergency situation; and 2) waivers to make changes designed to comply with state or federal laws enacted or regulations promulgated after July 1, 1984, or changes that demonstrably result in safer or environmentally more acceptable processes.

To apply for a waiver, the owner or operator must submit the information required under [9 VAC 20-40-50](#).D.2 or E.2.

Waivers to address an emergency situation may be granted verbally by the director for a period up to 30 days, unless revised by the board at its next regular meeting. A request shall also be submitted in writing to the director. Upon receipt, the director will grant or deny the request. In the event the director grants the request, it is subject to the approval of the board at its next regularly scheduled meeting. If the director denies the request, the applicant may renew the request at the next regularly scheduled meeting of the board.

A request for a waiver allowing changes to comply with state or federal laws or those that result in a safer or environmentally acceptable process will be considered by the board at its next regularly scheduled meeting. At the meeting the board may grant the request; deny the request; determine that additional information is needed from the owner or operator; decide that a public hearing is needed; or take any other action the board deems appropriate.

Notice of Intent

To initiate the process, the applicant must submit a notice of intent (NOI) to file an application. The NOI must contain the information specified in [9 VAC 20-40-60](#).A.

The director will review the NOI within 45 days of receipt and determine whether it is complete. If the NOI is determined to be incomplete, the director will advise the applicant and specify the information needed to complete the application. A deadline for making such corrections by the applicant shall also be specified.

Public Notice and Scheduling of Briefing Meeting

Once the NOI is determined to be complete, the board, at the applicant’s expense, shall deliver by certified mail, certain information to the governing body of each host community and each affected community, state legislators and regional planning district commissioners in the host and affected communities, and each person owning property adjoining the site of the proposed facility. This information shall also include notice of the date, time, location, and purpose of a briefing meeting to be held no more than 75 days or less than 60 days after the delivery date of the NOI to the host community.

The notice shall be published (at the applicant’s expense) in a newspaper of general circulation once a week for four successive weeks. The notice shall include: the name and address of the applicant; a description of the proposed facility and its location, the places and times where the NOI may be examined; the address and telephone number of the board and state agency from which information may be obtained; and the date, time

and location of the initial public briefing meeting. Copies of the NOI shall be provided to any person who specifically requests a copy.

Waiver of Host Community Participation

At this point, the governing body of the host community may waive further participation in the certification process. If participation will be waived, the governing body must notify the board in writing and provide a copy of the adopted resolution within 45 days of receiving the NOI. A waiver on the part of the host community shall not restrict the rights of any person or organization to participate in the certification process.

Conduct of Briefing Meeting

The primary purpose of the briefing meeting is to provide information on the proposed site and facility and receive comments, suggestions, and questions on them from the public. At least one representative of the applicant shall be present at the briefing meeting.

A briefing officer, selected from the board's membership, shall be responsible for conducting the meeting. The applicant will be allowed to give a presentation describing the proposal and respond to any questions. A stenographic or electronic record of the meeting shall be made and available for inspection, along with copies of any documents submitted at the briefing at the office of the board and the host community during normal working hours.

Additional Briefing Meetings

If additional briefing meetings are to be conducted, public notice shall be provided as required by [9 VAC 20-40-80.C](#).

Siting Agreement

After submission of the NOI, the governing body or its designated representatives and the applicant may meet to discuss any matters pertaining to the site and the facility, including negotiations of a siting agreement. The time and place of any such meeting shall be set by agreement, but at least a 48-hour notice shall be given to members of the governing body and the applicant. The board may assist in facilitating negotiations but shall not be integrally involved in negotiations.

The siting agreement may include any terms and conditions, including mitigation of adverse impacts and financial compensation to the host community, concerning the facility. If any provision of a siting agreement conflicts with state or federal law, the state or federal law shall prevail.

The siting agreement shall be executed by the signatures of the chief executive officer of the host community, who has been so directed by a majority vote of the local governing body, and the applicant or authorized agent.

Once the application for site certification is submitted, determined to be complete and the applicable public participation procedures initiated, the board shall notify each governing body that the negotiations with the applicant are to conclude within 30 days of publication of the notice. The time for negotiation may be extended

to a fixed date upon agreement of the applicant and the governing body and notification to the board. The board may also extend the date for cause.

If the governing body reports that no siting agreement has been reached and contains a written allegation that the applicant has failed or refused to negotiate in good faith, the director shall issue notice to the applicant and host community of the board's intention to hold an informal conference pursuant to § [2.2-4019](#) of the Virginia Administrative Process Act.

If the board finds that the governing body has shown that the applicant has failed or refused to negotiate in good faith, the board may deny the application for certification of site approval. Such a finding shall constitute final action by the board.

Impact Analysis

Within 90 days of the initial briefing meeting, the applicant shall submit a draft impact analysis to the board. The draft impact analysis shall include the information specified in [9 VAC 20-40-90.B](#), including a detailed assessment of the project's suitability with respect to the criteria specified in [9 VAC 20-50](#) (Hazardous Waste Facility Siting Criteria).

The applicant shall also provide copies of the draft impact analysis to the host community, as well persons owning property adjoining the site of the proposed facility. At least one copy shall also be made available at a convenient location in the host community for public inspection and copying during normal business hours.

Within 10 days of receipt, the board shall, at the applicant's expense, provide notice of the filing of the draft impact statement. This notice shall include be done in accordance with [9VAC 20-40-90.C](#).

After publication of the notice, 45 days shall be provided for comment on the draft impact analysis. A public meeting shall be held no sooner than 30 days and no more than 45 days after publication of the notice of the draft impact analysis in or near the host community. The meeting would be for the purpose of explaining, answering questions, and receiving comments on the draft impact analysis. A representative both the governing body and the applicant shall be present at the meeting.

The board shall accept written comments on the draft impact analysis submitted by mail during the public comment period and those comments submitted in writing or by presentation at the public meeting.

Within 10 days after the close of the public comment period, the board shall forward to the applicant a copy of all comments received on the draft impact analysis, together with its own comments.

The applicant shall prepare and submit a final impact analysis to the board after receiving the comments. The final impact analysis shall reflect the comments as they pertain to each of the applicable siting criteria ([9 VAC 20-50](#)) and other items required by the regulation. Upon request, a copy of the final impact analysis shall be provided by the applicant to each of the persons who received the draft impact analysis.

Submittal of Application for Certification of Site Approval

At any time within 6 months after submission of the final impact analysis, the applicant may submit to the board an application for site approval.

The application shall include: a summary of the proposal including a general description of the facility and the nature of the business; conceptual engineering designs for the proposed facility, a copy of the final impact analysis which evaluates the siting criteria; a detailed description of the facility's suitability to meet the criteria, including any design and operation means that will be necessary or otherwise undertaken to meet the criteria; a siting agreement, if one has been executed, or if none has been executed, a statement to that effect; and, the applicable application fee.

Note: Application fees range from \$10,000 to \$20,000 depending on the type of facility proposed. A waiver of fees may be requested and would be considered by the board at its next regularly scheduled meeting with a decision made within 30 days of the meeting. See [9 VAC20-20](#) for details.

Review and Public Notice of Application for Certification of Site Approval

The director shall review the application for completeness and notify the applicant within 15 days of receipt that the application is incomplete or complete. If the application is incomplete, the director shall notify the applicant and identify the information necessary to make the application complete. No further action shall be taken by the director until the application is complete.

If the application is complete, the director shall so advise the applicant and direct the applicant to furnish copies of the application to the host community and to each person owning property adjoining the proposed site. At least one copy of the application shall be made available by the applicant for inspection and copying at a convenient place in the host community during normal business hours.

The board shall cause notice of the application to be made as required by [9 VAC 20-40-100](#).E.

Once the public notice has concluded and the deadline for the applicant and governing body to end negotiations on the siting agreement has passed, the governing body shall submit to the board and to the applicant a report containing a complete siting agreement, if any, or in case of failure to reach full agreement, a description of points of agreement and unresolved points; and any conditions or restrictions on the construction, operation or design of the facility that are required by local ordinance.

If the governing body report is not submitted within the time required, the board may proceed to issue or deny the draft certification of site approval.

The applicant may submit comments on the report of the governing body at any time prior to the issuance of the draft certification of site approval.

Draft Certification of Site Approval

Within 30 days after receipt of the governing body's report, the board shall issue or deny a draft certification of site approval.

The draft certification of site approval shall specify the terms, conditions, and requirements that the board, on a case-by-case basis, deems necessary to protect health, safety, welfare, the environment, and natural resources.

Copies of the draft certification of site approval, together with notice of the date, time, and place of public hearing, shall be delivered by the board to the governing body of each host community, and to persons owning property adjoining the site for the proposed facility. At least one copy of the draft certification shall be available for inspection and copying at a convenient place in the host community during normal business hours.

Public Hearing on the Draft Certification of Site Approval

The board shall provide public notice of a public hearing on the draft certification of site of site approval. The hearing shall be held not less than 15 days or more than 30 days after first publication of the notice. Notice of the hearing shall be made as required by [9 VAC 20-40-130](#).B. at the applicant's expense. The public hearing shall be held in the host community.

The public hearing will be conducted by a hearing officer designated by the board. Parties to the hearing (see [9 VAC 20-40-130](#).D.) may present direct and rebuttal evidence in written and oral form. Other interested persons may be given an opportunity to testify if allowed by the hearing officer. Such persons shall be sworn and subject to cross-examination.

The hearing officer shall assemble the hearing record and within 15 days after the close of the hearing, deliver it to each member of the board.

Final Decision on Certification of Site Approval

Within 45 days after the close of the public hearing, the board shall meet within or in close proximity to the host community and shall vote to issue or deny the certification of site approval. At least seven days' notice of the date, time, place, and purpose of the meeting shall be made as required by [9 VAC 20-40-140](#).A. No testimony or evidence will be received at the meeting.

The board shall provide the applicant and the governing body of the host community with copies of the decision along with the required findings of fact and conclusions.

The decision shall constitute final action by the Board.